

TERMS AND CONDITIONS OF BUSINESS

General

These terms relate to (a) the arrangements of the supply to you of temporary workers by Pole Position Personnel (otherwise referred to as "we", "us", "our" etc in these terms) to cover short term requirements on an hourly or daily basis (b) the introduction to you by us of candidates for permanent positions.

These terms apply to all such arrangements and introductions referred to in paragraph 1 above, to the exclusion of any other term purported to be related upon by you. We are entitled to assume that any employee or agent of yours has authority to bind you (unless you notify us otherwise in writing) and we are not required to seek that authority.

We act as an employment business as defined in the Employment Agencies Act 1973 in the arrangement of the supply of temporary workers to you and as an employment agency (as defined) in the introduction of candidates for permanent positions. For the avoidance of doubt, any temporary workers arranged to be supplied or introduced by us are not (and are not to be regarded as) employed by us, and are to be treated as engaged under contracts for services.

Operative provisions

On receiving a request from you for the supply of a temporary worker or the introduction of a candidate for a permanent position we will take all reasonably practicable steps to arrange the supply of a suitable willing temporary worker or the introduction of a suitable willing permanent candidate to you from our register, but make no warranty as to such suitability. You are responsible for ultimately assessing the suitability of any candidate introduced for a permanent position for engaging that candidate and for arranging all required medical examinations and other investigations of that candidate (including the candidate's entitlement to work in the UK under the Immigration and Asylum Act 1999). We will take references on permanent candidates unless requested by you in writing. We will use reasonable endeavours on temporary workers where possible but cannot and will not be held responsible for the accuracy of such references.

You are responsible for ensuring that you hold any necessary licences, permits and consents etc. for any work a temporary worker or permanent candidate is required to do and in relation to any place where that work is to be carried out. We accept no liability for any claim, loss, damage, costs or expenses howsoever caused (and whether direct or indirect or consequential) resulting directly or indirectly from any act or omission whether negligent, fraudulent or otherwise: any temporary worker whose supply was arranged for or who was introduced to you or from the non-attendance for all or part of an assignment of any temporary worker. You are responsible for ensuring compliance with all health and safety and other legislation relating to an assignment and the use of the relevant temporary worker for it and for the supervision, direction and control of any temporary worker whose supply is arranged to you by us. Accordingly any relevant insurance cover in respect of temporary workers should be arranged by you. You should familiarise yourself with all relevant legislation regarding the use of temporary workers as we cannot accept any responsibility for any loss or expense incurred arising from any such legislation or as a result of infringement of such legislation. You undertake that you will comply with and conform to any and all relevant legislative provisions and law relating to the engagement, health and safety or working conditions of workers, in respect of any temporary worker working at your premises, and you shall be responsible for advising any such temporary worker of any rules, proceedings or policies to which the temporary worker may be required to conform whilst working at your premises. You shall indemnify us and keep us fully indemnified against any and all claims, proceedings, liability, costs, expenses, loss or damage which we may suffer arising directly or indirectly from any breach by you of your obligations under this paragraph 6.

Your liability to us to you for any breach by us of any of these terms or for any liability in negligence or otherwise shall not (save to the extent such negligence results in death or personal injury) exceed our commission received in respect of the introduction or arrangement of the supply of the relevant temporary worker or candidate to you. In any event we will not be liable in relation to any matter not reported in writing by you to us within 5 days of its occurrence.

If you breach any of these Terms and Conditions of business then we reserve the right to withdraw forthwith any temporary workers supplied to you without any liability being incurred on our part.

You shall indemnify us against any claims made by any third party arising out of the introduction or arrangement of the supply of any temporary worker to you or the acts or omissions of such temporary worker and against any claims made by the relevant temporary worker arising out of your acts or omissions.

Except in respect of death or personal injury caused by our negligence, or as expressly provided in these terms, we shall not be liable to you by reason of any representation by us (unless fraudulent), or any implied warranty, condition or term, or any duty at common law, or under the express provisions of these terms, for any loss of profit, loss of turnover, loss of business, or loss of goodwill, or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by our negligence or that of our servants or agents or otherwise) which arise directly or indirectly out of or in connection with our introduction of any candidate or arrangement of supply of any temporary worker under these terms (including any delay in providing or failure to provide such services) or any act or omission of any candidate or temporary worker introduced by us.

We accept no liability for any loss of or damage to property, arising directly or indirectly from any act or omission of any candidate or temporary worker introduced to you by us, even if such an act or omission is negligent, fraudulent or dishonest. Without prejudice to any other provisions of these terms, we shall not be liable to you or deemed to be in breach of these terms or the contract between us by reason of any delay in performing, or any failure to perform, any obligations in relation to the services to be provided to you, if the delay or failure was due to any cause beyond our reasonable control.

Charges for the Supply of Temporary Workers

The charge for the supply by us of any temporary worker to you is based on 15 minute units of time for which a temporary worker is supplied and shall be at such rate as is advised to you at the time of booking. Such charges vary according to the category and grade of the relevant temporary worker and largely comprise the sum of (i) the temporary worker's pay; (ii) an element of our commission based on the temporary worker's pay; and (iii) employers National Insurance contributions. If the working hours of the relevant temporary worker supplied to you exceed 8 on a weekday or involve night, weekend or Bank Holiday work, the charges will be subject to overtime and shift premium rates, details of which are available from us. All charges are subject to VAT. You will also be responsible for payment of any travelling and ancillary expenses incurred in respect of the relevant supply.

We reserve the right to increase the charge for the supply of any temporary worker by written notice to you, to reflect any increase in payments made or to be made by us in respect of such worker, which is due to any change to any applicable legislation (such as in relation to the prevailing rates of national insurance contributions or VAT).

We will be responsible for any deductions from any temporary worker's fees which may be required to be made by law in respect of tax and national insurance contributions or otherwise.

You shall countersign a completed timesheet in such form as we require for each week of an assignment being carried out by a temporary worker whose supply was arranged by us showing a true record of the hours worked by the relevant temporary worker in that week. If you fail to sign any required timesheet, the relevant temporary worker's own record of hours worked will be accepted and you will be charged on that basis.

A fee calculated on the same basis as in the table set out in paragraph 19 shall be payable by you if subsequent to our arranging the supply or introduction to you of any worker (and in the latter case within 6 months of such introduction) you, in the absence of any subsequent supply) you agree to engage or to make use of that temporary worker in any capacity (whether temporary or permanent, whether directly or indirectly and whether as an employee or self-employed person or otherwise) except directly through us on these terms or you or a member of your staff refer that temporary worker in any capacity to some other person or body and that person engages or makes use of that temporary worker in any capacity. You undertake to notify us as soon as practicable if any of the events mentioned above in this paragraph 16 occur.

Your obligation to pay a fee pursuant to paragraph 16 above in circumstances in which you have either engaged a temporary worker previously supplied to you by us or you have referred a temporary worker to a third party (in either case a "transfer") shall only arise when such a transfer takes place within the later of (a) 14 weeks of the start of the first assignment in which the relevant temporary worker was supplied to you by us or (b) 8 weeks of the end of any assignment. (For the purpose of (a) where there has been a break of more than 2 days between assignments; any later assignment (s) will be treated as being the first assignment from the start of which the relevant 14 week period will run. In circumstances in which you have engaged a temporary worker previously introduced or supplied to you by us, giving rise to payment of a fee pursuant to paragraph 16 above, you may elect as an alternative to payment of such fee to have the relevant temporary worker supplied to you on the terms otherwise set out in these terms for an extended period of 26 weeks, or as otherwise agreed between us, and at the end of which period the worker will transfer to you without charge. In terms of calculating the appropriate fee under paragraph 16 above, if the subsequent engagement or employment of the worker by you is on a temporary basis the fee payable shall be 200 times the hourly rate last agreed to you by us in respect of the supply of such temporary worker or (if that temporary worker has not been previously supplied to you) 200 times our standard hourly rate for that category and grade of temporary worker according to the scale of charges at the time.

Charges for the introduction of Candidates

Our fee for the introduction by us of a candidate for a permanent position who you subsequently engage (whether as an employee or as a self-employed person or otherwise and whether or not you have knowledge of that candidate prior to introduction) is a percentage of his/her total gross annual remuneration derived from such position (to include both cash benefits (salary, bonus commission etc) and a monetary value for all other benefits derived from the position) relevant position/engagement is intended to last for less than one year then the relevant fee shall be calculated on the basis of an assumed amount of annual remuneration, multiplying the actual total value of salary and benefits accordingly. Our fees are in any event subject to a minimum charge of £1000 for self-employed or commission only placements. The percentage charged is as follows:

Annual gross annual remuneration Fee % 0 - £8,499 = 15% £8,500 - £14,999 = 18% £15,000 - £19,999 = 20% £20,000 OR MORE = 25%

If such an engagement with you following our introduction of a candidate (other than one on a self-employed, commission only or temporary to permanent conversion placement basis) terminates within ten weeks of its commencement we will rebate to you 10% of our fee for each complete week less than ten for which the engagement did not continue, subject to the following conditions: (i) that you had paid the relevant fee in respect of that introduction in accordance with these terms; (ii) that any termination by you is lawful, (iii) that notice of termination is given in writing by you to us within 7 days of its occurrence and (iv) that no rebate had been given to you previously in respect of that position. Alternatively to a rebate we may in our sole discretion provide another suitable candidate upon and subject to these terms if the engagement by you of such a candidate terminates within four weeks of its commencement. For the purpose of this paragraph "permanent" means having duration of more than ten weeks.

invoicing & Payment

Our invoices are due for payment within 30 days of the invoice date. We reserve the right in respect of any invoice not paid by its due date to charge interest (without prior notification) at the statutory rate prescribed from time to time for the purposes of the Late Payment of Commercial Debts (interest) Act 1998 (both before and after any judgement) accruing on a daily basis on all amounts remaining outstanding from the due date until actual payment and in addition to a charge which is equivalent to the statutory late payment compensation payable under section 5A of the Late Payment of Commercial Debts (interest) Act 1998, which itself will carry interest as prescribed above until the date of its payment.

All payments must be made by you without any deductions, set-off or counterclaim and time shall be of the essence of the contract between us in respect of each of your payment obligations under these terms.

We reserve the right to cease providing our services to you and to suspend or withdraw the supply to you of any temporary worker, under any contract between us, without liability to you, if any payment is not made by you in accordance with these terms, or if any payment made by you by cheque or direct debit is dishonoured, or in the event of your insolvency or bankruptcy, or in the event that your credit limit arranged with us is exceeded by you, without notice to any other right or remedy which we may have, in any such event all amounts outstanding from you shall become immediately due and payable.

Any query regarding any invoice from us must be notified to us within 7 days of the invoice date. Any query made after the expiry of such time limit shall not be considered by us and the amount stated on the invoice shall be payable. Any element of the relevant invoice which is not in dispute shall be payable by the due date for payment of the invoice. Interest shall accrue on any disputed amount in accordance with the interest provisions set out above to the extent of your query regarding the invoice amount is not accepted by us. Queried or disputed invoices shall not justify the non-payment or late payment of other invoices. For the avoidance of doubt your payment obligations hereunder are not subject to the provisions of timesheets with the relevant invoice.

We shall be entitled to appropriate any payment made by you to such invoice or invoices outstanding from you as we think fit in the event that you have not provided a remittance advice in respect of your payment within 3 days of the date of the payment.

Any rebate in respect of a cancelled or amended (whether as to time or grade or otherwise) booking of a temporary worker shall be at our absolute discretion.

Miscellaneous

No variation of these terms is valid or binding unless approved in writing by one of our directors or divisional managers.

These terms shall be governed by and be construed in accordance with the laws of England and Wales and you submit with us to the exclusive jurisdiction of the courts on England and Wales in relation to any claims or matter arising out of these terms.

You must not request or permit or condone any temporary worker supplied by us to do anything that is or might be contrary to the Working Time Regulations 1998 ("the Regulations") and you must give to us on request any information to enable us to ensure the Regulations have been complied with. In particular you must allow each temporary worker supplied by us to exercise his/her paid annual leave under the Regulations. We will tell you of any notified annual leave dates of a temporary worker and unless you object within 7 days we will take it that you have agreed these. If you agree proposed holiday dates directly with any temporary worker, you must inform us immediately.

You must notify us in writing immediately if the hours worked by any temporary worker supplied by us are changed from those originally agreed with us such that the temporary worker works at any time between 11pm and 6am.

We reserve the right to use credit reference agencies to assess your creditworthiness as a customer.

These terms (together with any express terms set out in any proposal or quote made by us which are accepted by you) constitute the entire agreement between the parties and supersede any previous agreement or understanding. All oral terms and conditions express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

Any notice required or permitted to be given by either party to the other under these terms shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice (and may for the avoidance of doubt be given by facsimile).

No failure or delay by either party in exercising any of its rights under the contract between the parties shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the contract between parties shall be deemed to be a waiver of any subsequent breach or any other provision.

If any provision of these terms is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these terms and conditions and the remainder of the provision in question shall not be affected.